

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

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EARL BALL,  
*Petitioner/Appellant,*

*v.*

GERALD THOMPSON, WARDEN, ARIZONA STATE PRISON COMPLEX-EYMAN,  
*Respondent/Appellee.*

No. 2 CA-HC 2018-0002  
Filed December 13, 2018

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THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
NOT FOR PUBLICATION  
*See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f).*

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Appeal from the Superior Court in Pinal County  
No. S1100CV201701570  
The Honorable Dwight P. Callahan, Judge Pro Tempore

**APPEAL DISMISSED**

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COUNSEL

Earl Ball, Florence  
*In Propria Persona*

Mark Brnovich, Arizona Attorney General  
By Kelly Gillilan-Gibson, Assistant Attorney General, Phoenix  
*Counsel for Respondent/Appellee*

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MEMORANDUM DECISION

Presiding Judge Staring authored the decision of the Court, in which Chief Judge Eckerstrom and Judge Brearcliffe concurred.

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S T A R I N G, Presiding Judge:

¶1 Earl Ball appeals from the trial court's ruling denying his petition for writ of habeas corpus. We dismiss the appeal for lack of jurisdiction.

¶2 Ball was released from prison on community supervision in June 2016 and arrested in October 2016 for violating the terms and conditions of his release.<sup>1</sup> The Arizona Board of Executive Clemency revoked his community supervision in December 2016. In August 2017, Ball filed a petition for writ of habeas corpus alleging he had not violated the supervision terms. Treating Ball's filing as a petition for special action, the trial court accepted jurisdiction and denied relief on November 20, 2017.

¶3 On December 19, Ball filed a motion for reconsideration, followed by a second motion filed January 4. The trial court denied the first motion,<sup>2</sup> after which Ball filed a third motion for reconsideration in March 2018. The court denied that motion in an unsigned minute entry on April 11. Ball filed a notice of appeal on May 10, stating he wished to appeal from the denial of his petition.

¶4 We agree with the state that we lack jurisdiction over Ball's appeal. We first observe that the trial court properly construed Ball's habeas petition as a request for special action relief. *See Sheppard v. Ariz. Bd. of Pardons & Paroles*, 111 Ariz. 587, 588 (1975) (parole board decision reviewable by special action); *see also In re Oppenheimer*, 95 Ariz. 292, 297 (1964) ("In Arizona, the writ of habeas corpus may be used only to review

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<sup>1</sup> Ball had been imprisoned for multiple convictions of sexual exploitation of a minor and sexual conduct with a minor.

<sup>2</sup> The court never expressly addressed Ball's second motion for reconsideration.

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matters affecting a court's jurisdiction."). To be appealable, an order denying special action relief must be signed, and this court lacks jurisdiction if the notice of appeal is not filed within thirty days. *See* Ariz. R. P. Spec. Act. 6 (special action judgment civil in nature), 8(a) (denial of special action relief reviewable by appeal); Ariz. R. Civ. P. 58(b)(1) (requiring that "all judgments must be in writing and signed by a judge"); Ariz. R. Civ. App. P. 5(b) (superior court generally lacks authority to extend time for filing notice of appeal), 9(a) (notice of appeal must be filed "no later than 30 days after entry of the judgment from which the appeal is taken"); *see also James v. State*, 215 Ariz. 182, ¶ 11 (App. 2007) (no jurisdiction absent timely notice of appeal). The only signed, appealable order in this record is the trial court's judgment entered November 20, 2017, denying Ball special action relief. Ball's sole notice of appeal, filed months later, is patently untimely.<sup>3</sup>

¶5 Ball's motions for reconsideration did not extend the time for an appeal. Ariz. R. Civ. P. 7.1(e)(3). And Ball did not cite in his motion any rule allowing for a motion that extends the time for filing a notice of appeal. *See* Ariz. R. Civ. App. P. 9(e); *Farmers Ins. Co. of Ariz. v. Vagnozzi*, 132 Ariz. 219, 221 (1982). In any event, no motion was filed within the time limit required to extend the time for filing a notice of appeal, even had he cited an applicable rule. *See generally* Ariz. R. Civ. P. 50(b), 52(b), 59(d), 59(a); Ariz. R. Civ. App. P. 9(e).

¶6 Although it did not cite the appropriate rule, Ball's final motion for reconsideration asserted there was "newly discovered evidence" in support of his claims. Pursuant to Rule 60(b)(2) and (c)(1), Ariz. R. Civ. P., such a motion may be made within six months of judgment. Thus, were we to construe Ball's final motion as seeking relief under Rule 60(b)(2), it was timely filed. An order denying such a motion may be appealed pursuant to A.R.S. § 12-2101(A)(2), although the rule does not permit appeal from the underlying judgment. *See Hirsch v. Nat'l Van Lines, Inc.*, 136 Ariz. 304, 311 (1983). However, the trial court's order denying Ball's third reconsideration motion was unsigned and, therefore, we lack jurisdiction to consider it on appeal. *See* Ariz. R. Civ. P. 58(b)(1); *Klebba v. Carpenter*, 213 Ariz. 91, ¶¶ 6-8 & n.4 (2006).

¶7 We dismiss Ball's appeal.

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<sup>3</sup>An order denying a petition for writ of habeas corpus need not be signed. Ariz. R. Civ. P. 58(b)(2)(B). But, even if the trial court had erred in treating Ball's petition as a special action, his notice of appeal was untimely.